

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

YOUTH SERVICES AGENCY, INC.

Employer

and

Case 4–RC–21002

AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES,  
DISTRICT COUNCIL 87, AFL-CIO

Petitioner

**REGIONAL DIRECTOR’S DECISION AND  
DIRECTION OF ELECTION**

The Employer, Youth Services Agency, is a nonprofit corporation that provides residential outdoor camp and school programs for delinquent and dependent boys at locations in Pennsylvania, Maryland, and Delaware. The Petitioner, AFSCME District Council 87, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of the nonprofessional employees at the Employer’s facility (the Facility) in Jim Thorpe, Pennsylvania.

The parties agree that 12 classifications of nonprofessional employees should be included in the bargaining unit and that eight classifications should be excluded.<sup>1</sup> The sole issue in this case concerns the status of the Overnight Watch Persons (OWPs). The Employer contends that the OWPs are guards within the meaning of Section 9(b)(3) of the Act and therefore should be excluded from the unit, while the Petitioner maintains that the OWPs are not guards. There are about 11 OWPs at issue.

A Hearing Officer of the Board held a hearing, and the parties filed briefs with me. I have considered the evidence and the arguments presented by the parties, and as discussed below

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<sup>1</sup> The parties agreed to include all full-time and regular part-time nonprofessional direct care employees, including Counselors, Adventure Counselors, Residential Counselors, Counselor Aides, Line Staff, Ranger Instructors, Maintenance Employees, Module Leaders, Certified Nurses Aides, Licensed Practical Nurses, Dietary Staff, and Cooks.

The parties agreed to exclude all Managers, Teachers, Directors, Case Managers, Local Therapy Team, Professional Employees, Receptionist/Medical Assistance Coordinator, Vocational Coordinator, guards, and supervisors as defined in the Act.

I have concluded that the OWPs are not guards within the meaning of Section 9(b)(3) of the Act. Accordingly, I have included them in the unit.

To provide a context for my discussion, I will first present an overview of the Employer's operations. Then, I will review the factors that must be evaluated in determining whether the OWPs are guards. Finally, I will present in detail the facts and reasoning that support my conclusion.

## **I. OVERVIEW OF OPERATIONS**

The Employer operates a licensed outdoor residential placement program at the Facility. The Employer contracts with probation and youth organizations to provide programs for court-referred boys, herein called residents. About 90 percent of the residents are classified as delinquent, and the remaining 10 percent are classified as dependent, meaning that they were referred because of custodial problems or dysfunctional family circumstances.

The Employer's programs at the Facility are regulated by the Pennsylvania Department of Public Welfare (DPW). These programs include education, community service placements, therapy, vocational services, and adventure experiences. An accredited private school also operates at the Facility. The Employer devises a service plan for each resident, depending on his particular educational and behavioral needs, and this program is administered by a Case Manager.

The physical facility consists of 40 acres of wooded areas, buildings, tents, roads, and footpaths, set inside a larger wooded area. The Facility is not fenced around its perimeter, although there is a gate at the main entrance where a driveway connects the Facility to the road. The Facility is organized into six Villages: Adventure Village, Lehigh Village, Apache Village, Shawnee Village, Lenape Village, and Explorers Village. Each Village houses a different therapeutic program. There is also an Administration Building, located near the front gate, an Explorers Learning Center, an Adventure Learning Center, a dining hall, a shower house, a ropes course, a basketball court, and recreation fields.

Each Village except Lehigh Village consists of three or four cabins for the residents, which are clustered around a staff shed. Lehigh Village is a primitive site with tents instead of cabins. Each staff shed houses a camera monitor, which displays images from cameras located in and around the cabins.

The Facility operates on a 24-hour basis with three regular staff shifts: first shift (7:30 a.m. to 3:30 p.m.), second shift (3:30 p.m. to 11:30 p.m.), and third shift (11:00 p.m. to 7:30 a.m.).<sup>2</sup> The OWPs work the third shift.

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<sup>2</sup> There is also a compressed shift, consisting of two consecutive days of first and second shift combined, and a third day of first shift only, for a total of 40 hours worked in three days.

## **II. FACTORS RELEVANT TO DETERMINING GUARD STATUS**

Section 9(b)(3) of the Act provides that the Board cannot find a unit appropriate if it includes with other employees, “any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer’s premises.” It further states that labor organizations cannot be certified to represent guards if they admit employees other than guards to membership.

The legislative history of Section 9(b)(3) of the Act indicates that the separation of guards from other employees for the purposes of collective bargaining was intended to avoid conflicting loyalties and to ensure an employer that it could have a core of plant protection employees in the event of industrial unrest. *Tac/Temps*, 314 NLRB 1142, 1144 (1994); *Lion Country Safari*, 225 NLRB 969, 970 (1976); *McDonnell Aircraft Corporation*, 109 NLRB 967, 969 (1954). The Board has stated that in determining whether employees are guards, it is primarily concerned with the nature of the employees’ duties and that employees are guards if they are charged with “guard responsibilities” that are not a minor or incidental part of their overall responsibilities. *Boeing Co.*, 328 NLRB 128, 130 (1999); *J.C. Penney Co.*, 312 NLRB 32 (1993); *Hoffman Security, Ltd.*, 302 NLRB 922, 923 (1991). The employees in question must be engaged “directly and substantially” in the protection of their employer’s property or the property of their employer’s customers in order to be found to be statutory guards. *Courier Dispatch Group*, 311 NLRB 728, 733 (1993). The Board has defined guard responsibilities as those typically associated with traditional police and plant security functions such as: (1) the enforcement of rules directed at other employees; (2) the authority to compel compliance with those rules; (3) training in weapons and security procedures; (4) possession of weapons; (5) participation in security rounds or patrols; (6) monitoring and controlling access to the employer’s premises; and (7) wearing guard-type uniforms or displaying other indicia of guard status. *Boeing Co.*, above, citing *Wolverine Dispatch, Inc.*, 321 NLRB 796, 798 (1996); *55 Liberty Owners Corp.*, 318 NLRB 308, 310 (1995); *Rhode Island Hospital*, 313 NLRB 343, 346 (1993); *Burns Security Services*, 300 NLRB 298, 300 (1990), enf. denied, 942 F.2d 519 (8<sup>th</sup> Cir. 1991).

## **III. FACTS**

### *Resident Life*

The Employer provides adventure and sports programs for the residents, including such activities as hiking, camping, mountain biking, and basketball. Some hiking or camping trips occur off-site at various locations on the East Coast. The Employer also provides schooling or escorts residents to schools away from the Facility.

Residents sleep in the cabins, and they go to bed at 9:00 p.m. They may read or write letters before going to sleep. Residents do not maintain personal items in the cabins, except for clothing.

### *Staffing*

Greg Yeager, the Facility's Assistant Director, is responsible for the overall operation of the Jim Thorpe site. He works during the day but is on-call on a 24-hour basis. Yeager has been notified of emergencies about 12 times, and was brought in to handle an emergency once, on third shift during the last year.

During the day, first and second shift Supervisors remain primarily in the Administration Building. They are responsible for admitting, searching, and approving any visitors to the Facility, including law enforcement personnel, probation officers, and parents.

Overnight Supervisor James Hoppel<sup>3</sup> works Monday through Friday and is relieved on Saturday and Sunday by OWP Brian King. The Overnight Supervisor supervises all OWPs and is responsible for the entire Facility on third shift. He ensures that the front gate is locked and makes nightly rounds of the Facility in his vehicle, checking buildings and the perimeter. He also checks to make sure that lights are turned off in buildings and deals with cleanliness or safety concerns, such as fire hazards. The Overnight Supervisor checks in with the OWP in the staff shed in each Village nightly, usually for one or two 15-minute visits. He generally stays in the Administration Building except during his rounds.

As required by DPW regulations, the Employer maintains a staff ratio of eight residents to one staff member during the first and second shifts, and 16 residents to one staff member during the third shift. There are usually one or two OWPs assigned to each Village. The second shift staff members are responsible for the residents until 11:30 p.m. From 11:30 p.m. until 7:30 a.m., when the first shift reports to work, the OWPs are responsible for the residents.

### *Duties of the Overnight Watch Persons*

In general, the OWPs maintain supervision of the residents under their care. Among other things, they make certain that the residents do not harass or threaten each other or try to escape from the Facility. The OWPs monitor the residents in their cabins by observing the monitors in the staff sheds, as well as by making regular checks of the cabins.

Interaction with Residents The OWPs interact with residents in several ways. Residents must be supervised by a staff member at all times on all shifts. On the third shift, the OWPs accompany residents any time they leave the cabin during the night to go to the infirmary. If the resident needs to go to the bathroom or get a drink of water, the resident must ask permission to leave the cabin, and the OWP observes on the monitor, or directly by visual observation, that the resident goes to the bathroom and returns to the cabin.

The OWP may bring a resident an aspirin or an extra blanket. If a resident cannot sleep or wants conversation, the OM may speak with and counsel him. OWP Winkler testified that he never turns away a resident but will always permit him to enter the staff shed to talk for a short while. If a resident leaves his bed to approach another resident, the OWP will investigate the circumstances. Winkler testified that on one occasion when a resident urinated in a cup and

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<sup>3</sup> The parties stipulated the James Hoppel is excluded from the bargaining unit as a supervisor.

threw the contents on another resident he notified the supervisor on duty, investigated the incident, and prepared an incident report.

The Employer has a Safe Crisis Management program which emphasizes using the least restrictive means of regaining control of problem situations. The OWPs, along with all other employees with contact with residents, are trained to intervene physically with the residents when appropriate. Restraint is used only when the resident is at risk of harming himself or someone else.

Monitoring Residents The primary focus of the OWPs is to monitor the residents while they are sleeping. The OWP is stationed in the Village staff shed. He watches the cameras in the staff shed and physically enters and checks each cabin every 15 minutes to make sure that the residents are asleep in their beds. The OWP is required to account for each resident during the night. If there are two OWPs stationed in a Village, one OWP will remain in the staff shed viewing the monitors while the other performs the cabin checks. If there is only one OWP stationed in a Village, the staff shed remains empty while the OWP performs the checks. When the residents are camping off-site, the staff members accompanying the residents inspect the tents every 15 minutes.

Keys and Radios All staff members carry keys to buildings at the Facility. The OWPs carry keys to the cabins, the staff shed, and the shower houses. Showers are locked both day and night.<sup>4</sup> During the third shift, the Administration Building, dining hall, and pantry remain locked, and the Overnight Supervisor is responsible for locking the entrance gate to the Facility. Staff sheds and cabins are not locked at night.

All staff members carry two-way radios; there are no land lines connecting the buildings. The OWPs use the radio to report incidents as needed to the Overnight Supervisor. They may also communicate by radio with other OWPs. Reportable incidents could include pillow fights, contraband, property damage, or suspicious activities. The OWPs are not required to report routine matters to the Overnight Supervisor, and they may respond to certain types of incidents without requesting assistance. For example, if a resident wets his bed, the OWP might change the sheets himself or escort the resident to the shower.<sup>5</sup> However, the OWPs report more serious incidents or suspicious activity to the Overnight Supervisor.

Check Lists All staff members are accountable for the residents under their care during their shifts. Each night, the OWP must complete the “night log” to document the cabin checks and to account for the residents in his Village. The form has spaces for the OWP to mark the cabins checked, the times, the total resident count, and an “assessment” (for example, “all present”). The form has two questions at the end: whether all residents were accounted for and whether there were any immediate safety or maintenance concerns. The OWP must circle “yes” or “no,” and must explain the circumstances if “no” is circled. The form is signed by the OWP and by the first shift Supervisor and is used to document the shift transfer from third shift to first shift. The Overnight Supervisor receives a copy but does not sign the form.

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<sup>4</sup> The daytime employees carry keys to the classrooms, showers, gym, and other buildings.

<sup>5</sup> A first shift staff member might take similar actions if he discovers a bed-wetting incident upon reporting to work in the morning.

Second shift employees remain in the cabins with the residents until 11:30 p.m. and each day must complete a form used to ensure accountability for all residents during the transfer from second shift to third shift.<sup>6</sup> The form is signed by the second shift employee and the OWP.

Searches and Confiscation The record does not establish that the OWPs have the authority to conduct searches, and only the Overnight Supervisor has ever conducted a search of a resident on third shift. Assistant Director Yeager testified that the OWPs may be required to search residents where there is a safety concern or physical threat to a resident or another employee. He later clarified his testimony to state that OWPs do not frisk residents, but if they see an item that poses a threat they would ask about it. There is no evidence that any OWP has ever conducted a search of a resident.<sup>7</sup> OWP Winkler testified that he was unaware that he had any authority to search residents and that he has not been trained in conducting searches.

During cabin checks, the OWP will survey the cabin for any contraband. An OWP may confiscate contraband from residents, such as drugs, guns, knives, bottles, or cigarettes, if it is visible in a resident's bed, or may request a resident to remove apparent contraband from his pocket. The OWP would notify the Overnight Supervisor and retain any confiscated item in the staff shed. The OWP is not permitted to disturb the sleeping residents or to move or lift mattresses. A first or second shift employee would follow the same guidelines as the OWP in confiscating an item.

Protecting against trespassers and property damage The OWP is responsible to a limited degree to survey the property for trespassers. The OWP is not required to make rounds of the Facility or the perimeter of his Village. However, if the OWP notices that any unauthorized person has entered the Village, he should notify the Overnight Supervisor by radio, ask the trespasser why he or she is on the property, and request the trespasser to leave. The OWP is not expected to intervene physically. OWP Winkler testified that he received no specific training in handling trespassers and that he would apply common sense in determining his course of action. The OWPs are not authorized to call the police; only the Overnight Supervisor has that authority. Assistant Director Yeager testified to an incident a few years ago when several residents tried to escape with the assistance of outsiders, and the OWPs intervened and requested the trespassers to leave.

All staff members are required to report property damage if they observe it. The OWP is responsible for visually checking, in person or by viewing the monitor, for any damage to property during third shift. Damage such as broken windows or doors must be listed on the night log and reported to the maintenance staff or to the Supervisor depending on the degree of damage.

Incident Reports All staff members, including the OWPs, are required to report any positive or negative incidents on an "Official Client Incident Report." These reports are used to communicate information to the resident's Case Manager. Among other things, the Incident

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<sup>6</sup> There is no form documenting staff accountability for the transfer from first to second shift. The day staff maintains a logbook to record events during first and second shifts.

<sup>7</sup> Yeager further testified that OWPs may not strip search residents.

Report contains spaces to record the date, time, location, and nature of the incident, a summary of the incident, and what action, if any, was taken by the OWP. The document is signed and dated by the staff member and the resident. Incident Reports filled out by OWPs are given to the first shift Supervisor, and in extreme cases Assistant Director Yeager also receives a copy.

### *Qualifications and Training*

The OWPs' job description indicates that OWPs need a high school diploma or GED degree and that they must be 21 years of age with a valid driver's license. There are no security qualifications required for hiring.

All staff members with direct personal contact with residents, including OWPs, are required by DPW regulations to undergo an annual week-long training cycle. Training topics include: Safe Crisis Management, First Aid and CPR, Suicide Prevention, Child Abuse, and Fire Safety. There is no special training for OWPs.

### *Transfers and Overtime*

OWPs may transfer to daytime positions as Residential Counselors or Intervention Counselors depending on their skills and experience and the Employer's staffing needs. Similarly, first or second shift employees may transfer to third shift. A transfer of an employee from first or second shift to third shift occurred about two years ago.

On average twice a week, first or second shift employees work overtime as OWPs on third shift. Less frequently, some OWPs work overtime on first or second shifts. OWP Winkler testified that he usually works 20 hours overtime weekly on first shift Saturdays and Sundays.

### *Miscellaneous*

None of the Employer's employees are required to wear a uniform, identification badge, or name tag. Employees are issued T-shirts showing the Employer's logo but are not required to wear them. None of the staff members carry any weapons, pursuant to DPW regulations which require the Employer to maintain a weapon-free environment. Employees are not bonded, deputized, fingerprinted, or photographed. Pursuant to DPW regulations, all service providers including the OWPs are required to undergo a background check for child abuse and criminal history.

All staff members must comply with applicable DPW regulations, which require, among other things, that overnight staff members stay awake during their shift and perform the cabin checks every 15 minutes. All staff members are required by the DPW to follow the Employer's Standard Operating Procedures (SOPs), which define proper procedures for Incident Reports, other paperwork, off-site emergency care, and emergency medical plans. The SOPs are maintained in manuals located in the staff sheds.<sup>8</sup>

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<sup>8</sup> However, OWP Winkler testified that there is no SOP manual currently in the staff shed in the Apache Village.

#### IV. ANALYSIS

The evidence establishes that the primary function of the Overnight Watch Persons is to account for the custody and safety of the residents during the third shift. The OWPs watch the monitor and personally check on the residents while they are sleeping, and observe or escort them when they leave the cabin at night. They intervene in the case of minor incidents, and they provide a listening ear to the residents as needed. In general, their duties are custodial in nature, similar to the duties of the “nightmen” at a facility for delinquent teenage boys in *George Junior Republic*, 224 NLRB 1581, 1583 (1976). In that case, like this one, the primary responsibility of the nightmen was to make sure that the residents did not leave the premises at night, and they were also responsible for maintaining order and for preventing unauthorized individuals from entering the residents’ cottages.<sup>9</sup> The Board found that they were not guards and included them in a nonguard unit.

In many significant respects, the OWPs do not possess characteristics typical of guards. They do not carry weapons, they are not trained in security functions, and they are not permitted to use physical force against trespassers.<sup>10</sup> They also do not wear uniforms or identification badges, and they do not present themselves as guards in appearance. They undergo background checks and training, as required for all the Employer’s employees pursuant to DPW regulations, but they are not bonded, deputized, fingerprinted, or photographed. See *55 Liberty Owners Corp.*, above at 310. The OWPs do not monitor ingress or egress to the Facility, issue visitor passes, inspect packages, lock or unlock gates to the Facility, or make rounds of the Facility, responsibilities often relied on by the Board in finding employees to be guards. See e.g. *A.W. Schlesinger Geriatric Center*, 267 NLRB 1363 (1983);<sup>11</sup> *PECO Energy Co.*, 322 NLRB 1074, 1083-1084 (1997).<sup>12</sup>

In the instant case, the Overnight Supervisor, rather than the OWPs, controls the front gates, inspects and searches visitors as needed, checks buildings for maintenance and fire hazards, and performs regular rounds of the Facility. The Board has found employees who perform some guard functions not to be guards where other employees provide the major security duties on the premises. See e.g.; *Madison Square Garden*, 325 NLRB 971 (1998); *Lion*

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<sup>9</sup> The Employer contends that the OWPs are more akin to the “security” employees who were found to be guards in that case. The Board’s decision indicates that the security employees’ entire job was to patrol the grounds to prevent fire, theft, illegal entry, and trespassing. Based on these facts, it appears that they performed nothing but guard-like functions. I therefore find the OWPs to be far more analogous to the nightmen than to the security employees in that case.

<sup>10</sup> The OWPs, in common with other employees who have contact with residents, are trained in the use of physical force, pursuant to the Employer’s “Safe Crisis Management” guidelines.

<sup>11</sup> In that case, maintenance employees who performed security functions at a nursing home were found to be guards where 50 to 70 percent of their shift was devoted to guard-like tasks including locking and unlocking doors and gates, observing shift changes, opening packages, assuring the safety of employees arriving for and leaving from work, making rounds of the facility, checking lights in the parking lot and other areas, and asking trespassers to leave the premises.

<sup>12</sup> In that case, a janitor who monitored security cameras, operated security gates and entranceways, checked people into the property, reported infractions, and issued visitor passes, was found to be a guard.



*Country Safari*, 246 NLRB 156 (1979); *George Junior Republic*, above; *New Hotel Monteleone*, 127 NLRB 1092, 1094 (1960). Compare *A.W. Schlesinger Geriatric Center, Inc.*, above.

Although the OWPs perform certain guard-like functions, I find that these functions are incidental to their primary responsibility of accounting for and supervising the residents during the night. In this connection, the OWPs' responsibility for surveying the property for trespassers is quite limited. They simply observe the monitors and the premises as they do their headcounts, and they are not required to make rounds of the Facility or even of their Villages to check for trespassers. The OWPs may do no more than ask unauthorized individuals to leave the premises and then contact the Overnight Supervisor, who alone has authority to intervene physically or call the police. Although the Board has relied on limited responsibility to deal with trespassers to help support a finding of guard status, where other indicia of guard status were present, see e.g. *A.W. Schlesinger Geriatric Center*, above, in this case, the OWPs' duty with respect to trespassers is incidental to their primary responsibilities of ensuring the residents' presence and safety. See *George Junior Republic*, above; *55 Liberty Owners Corp.*, above;<sup>13</sup> *Madison Square Garden*, above.<sup>14</sup> Moreover the record established only one confrontation with trespassers on the overnight shift. Cf. *Supreme Sugar Company, Inc.*, 258 NLRB 243 (1981).<sup>15</sup> The OWPs are also charged with reporting property damage when they see it, preparing Incident Reports, intervening with the residents where there is possible misconduct, opening and closing certain buildings, and carrying keys and radios. However, these duties are also required of the first and second shift employees. The Board has held that it will not exclude from nonguard status employees whose duty to protect an employer's property is shared by all employees and is incidental to their nonguard duties. *Tac/Temps*, above at 1143, citing *Lion Country Safari*, above; *Ford Motor Co.*, 116 NLRB 1995 (1956).<sup>16</sup>

There was contradictory testimony as to whether the OWPs may search residents. Although Yeager testified that they have such authority, there is no evidence that any employee has ever exercised it, and the sole OWP who testified stated that he does not have the authority and has never physically searched a resident. At most, the record shows that the OWPs have the authority to confiscate visible contraband.

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<sup>13</sup> In that case, the doorpersons' and elevator operators' guard-like functions of asking unauthorized persons to leave and reporting violations to a supervisor were incidental to their primary nonguard duties, and there was no other evidence that the employees enforced rules against other employees or other persons.

<sup>14</sup> The event staff employees in that case were authorized to deny access to other individuals or employees and to pat down customers or use a wand to check them for contraband. They were not deemed guards, however, where there was no evidence they could detain anyone, and they were not armed, did not wear badges or uniforms, did not provide crowd control, and could not arrest or eject individuals from the facility.

<sup>15</sup> In that case, watchmen were found to be guards where their major responsibility was to make rounds of the plant and check for fires and boiler problems, as well as trespassers, although actual incidents involving trespassers were rare. By contrast, the OWPs do not make rounds, and watching for trespassers is a minor portion of their duties.

<sup>16</sup> The receptionist who monitored admission to a building, issued visitor passes, and reported violations to her supervisor was not a guard; her obligation to report violations of company rules was the same as that of any employee.

There is no evidence to suggest that the OWPs have any authority or responsibility to enforce rules against fellow employees or that they would be used to provide security in the event of labor unrest or a strike. Rather, the duties of the OWP are directed toward the safety and custody of the residents during the normal operation of the Employer's residential outdoor program. These are not the circumstances in which Congress was concerned about the possibility of conflicting loyalties. See *Tac/Temps*, above; *Lion Country Safari*, above.

The guard-like duties here are significantly less than those found by the Board to confer guard status in cases cited by the Employer. *Corrections Corporation of America*, 327 NLRB 577 (1999), concerned a facility housing adult inmates convicted of crimes who required drug treatment and mental health services. The Correctional Officers (COs) were found to be guards where their extensive guard-like responsibilities included the intake of inmates, escorting inmates to various locations within the facility, checking visitors in and out, performing rounds, monitoring security cameras and alarm systems, responding using weapons to disturbances caused by inmates, preventing escapes, physically removing unruly inmates, and searching visitors, inmates, and property. The COs wore uniforms, and some of them carried weapons and were trained in the use of handcuffs, leg irons, and belly chains. In *Crossroads Community Correctional Center*, 308 NLRB 558 (1992), in a facility operating a work release program for a state department of corrections, the Correctional Resident Counselors (CRCs) were far more involved in regular security functions than the OWPs in this case. Indeed, their job description indicated that their basic function was to perform "assigned security duties." They controlled ingress to the facility, searched or frisked visitors, employees, inmates, and packages, performed "shakedowns" of inmates' quarters using trained dogs, confiscated contraband, monitored cameras which provided surveillance of the front entrance and corridors of the facility, conducted periodic surveys of the parking lot to check on vehicles, performed intake of inmates, escorted inmates throughout the facility, issued discipline to inmates, enforced employer work rules regarding theft against other employees, and notified their supervisors in the event of a disturbance. The Employer's OWPs, in contrast, perform fewer and less police-like duties and generally do not possess the characteristics and responsibilities that were the basis of guard findings in other cases.<sup>17</sup>

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<sup>17</sup> I find two recent Decisions and Directions of Election cited by the Employer to be distinguishable.

In *Allvert Work Release*, Case No. 19-RC-14203, the Regional Director found the Program Monitors in an adult work release program to be guards. The duties and responsibilities of the Program Monitors included the following guard-like functions, none of which are required of the Employer's OWPs: monitoring ingress and egress at the facility, including interviewing all visitors; maintaining logs of all visits; searching packages brought into the facility; pat-searching and strip-searching inmates and visitors; reporting employee violations of standards of conduct; making daily rounds of the entire facility; conducting random searches of inmates' rooms and urinalysis and Breathalyzer tests; and assisting in arrests including handcuffing inmates. They also underwent security training at the State Correctional Officers Academy.

In *Calumet Center*, Case No. 7-RC-21928, the Regional Director found the Youth Specialists at a residential detention facility for the temporary housing of adolescent delinquent boys to be guards. Although the Youth Specialists performed some functions similar to those of the OWPs, (personally checking inmates at least every 15 minutes, performing headcounts, notifying the supervisor in cases of misconduct), their duties and responsibilities also included the following guard-like functions, none of which are required of the OWPs: monitoring the youths during their intake process; escorting groups of inmates through hallways; accompanying inmates during their entire daily routines as well as to medical

Accordingly, I find that the OWPs are not guards within the meaning of the Act, and I shall include them in the unit. *George Junior Republic*, above; *55 Liberty Owners Corp.*, above; *Wolverine Dispatch, Inc.*, above; *Tac/Temps*, above.

## **V. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and for the reasons set forth above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The Overnight Watch Persons are not guards within the meaning of Section 9(b)(3) of the Act.
6. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part-time nonprofessional direct care employees, including Overnight Watch Persons, Counselors, Adventure Counselors, Residential Counselors, Counselor Aides, Line Staff, Ranger Instructors, Maintenance Employees, Module Leaders, Certified Nurses Aides, Licensed Practical Nurses, Dietary Staff, and Cooks, employed by the Employer at its Jim Thorpe, Pennsylvania Facility, **excluding** all other employees, Managers, Teachers, Directors, Case Managers, Local Therapy Team, Professional Employees, Receptionist/Medical Assistance Coordinator, Vocational Coordinator, guards, and supervisors as defined in the Act.

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appointments or court appearances; and conducting random searches of inmates and their cells for contraband and items which could be used as weapons. They performed about 32 head counts of the inmates daily and wore uniforms. Moreover, they worked in a far higher-security facility than the Employer's Facility; in fact, the inmates slept in cells that could only be opened by guards and supervisors.

## **VI. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by the **American Federation of State, County and Municipal Employees, District Council 87, AFL-CIO**. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

### **A. Eligible Voters**

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike, which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are: 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility; 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date; and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

### **B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the **full** names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **May 13, 2005**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list.

Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (215) 597-7658, or by e-mail to [Region4@NLRB.gov](mailto:Region4@NLRB.gov).<sup>18</sup> Since the list will be made available to all parties to the election, please furnish a total of two (2) copies, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

## **VII. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. A request for review may also be submitted by e-mail. For details on how to file a request for review by e-mail, see <http://gpea.NLRB.gov/>. This request must be received by the Board in Washington by 5:00 p.m., EDT on **May 20, 2005**.

Signed: May 6, 2005

at Philadelphia, PA

/s/ [Dorothy L. Moore-Duncan]  
DOROTHY L. MOORE-DUNCAN  
Regional Director, Region Four

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<sup>18</sup> See OM 05-30, dated January 12, 2005, for a detailed explanation of requirements which must be met when electronically submitting representation case documents to the Board, or to a Region's electronic mailbox. OM 05-30 is available on the Agency's website at [www.nlr.gov](http://www.nlr.gov).